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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/540,724

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Daniel Clapp

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EXAMINER

ADAMS, GREGORY W

ART UNIT

PAPER NUMBER

3652

MAIL DATE

DELIVERY MODE

09/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/540,724

Applicant(s)

CLAPP, DANIEL

Examiner

Gregory W. Adams

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,9-11,14-17 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,9-11,14-17 and 20-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-6, 9, 14-17 & 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Hagenbuch et al. (US 6,439,668) (previously cited).

With respect to claims 1, 11, Hagenbuch discloses a pallet stacking unit comprising:

- a pallet hopper 122 reversibly moveable from a pallet loading and stacking position (FIG. 23) to a stacked pallet discharging position (FIG. 25), and
- a pallet hopper being pivotally linked to a fixed support through a 4-bar linkage 184, 186.

With respect to claim 3, Hagenbuch discloses an L-shaped hopper 122.

With respect to claim 4, Hagenbuch discloses first pair of bars 184, 186 disposed on one side a second pair of bars 184, 186 symmetrically disposed on the other side of the pallet hopper, each of the 4 bars being pivotally linked at one of its ends to a pivot point 120, 121 on a fixed support and at the other of its ends to a pivot point on a pallet hopper 122.

With respect to claim 5, Hagenbuch discloses distances between consecutive pivot points on each side of the pallet hopper are substantially equal.

With respect to claim 6, Haggenbuch discloses a flow track 124 to facilitate discharge of stacked pallets from a pallet hopper.

With respect to claim 9, Haggenbuch discloses means for dampening movement of a pallet hopper.

With respect to claim 13, Haggenbuch discloses 4-bar linkage provides a compound motion characterized by a nearly vertical movement of the forward edge of the pallet hopper as the pallet hopper transitions from the pallet loading and stacking position to the stacked pallet discharging position.

With respect to claim 14, Haggenbuch discloses a first pair of bars disposed on one side of the pallet hopper and a second pair of bars symmetrically disposed on the other side of the pallet hopper, each of the 4 bars being pivotally linked at one of its ends to a pivot point on a fixed support and at the other of its ends to a pivot point on a pallet hopper.

With respect to claim 15, Haggenbuch discloses distances between consecutive pivot points on each side of the pallet hopper are substantially equal.

With respect to claim 16, Haggenbuch discloses an L-shaped.

With respect to claim 17, Haggenbuch discloses a flow track.

With respect to claim 20, Haggenbuch discloses means for dampening the movement of the pallet hopper.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 & 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagenbuch et al. in view of Konstant (US 2002/0159865) (previously cited).

With respect to claims 10 & 21, Hagenbuch et al. do not disclose a gas spring. Konstant discloses a gas spring 66 to provide container unloading system that deliver unit loads, parts container bins and the like to an access aisle and smoothly present the loads at an operator selected angle of presentation for ease of access. Para. [0009]. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Hagenbuch et al. to include a gas spring, as per the teachings of Konstant, to improve tilting load deliverers.

Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagenbuch et al. in view of Erdman (US 4,037,734) (previously cited).

With respect to claims 22 & 24-25, Hagenbuch et al. does not disclose a gate, gate supporting assembly and means for raising and lower a flow track and tilting a gate. Erdman discloses a gate 42 and gate supporting members and means 48 for raising and lowering and tilting a gate to solve the problem of depalletizing layers of cases individually by eliminating the step of lifting and raising the entire stack, saving time. C1-2. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Hagenbuch et al. to include disclose a gate and means for raising and lower a flow track and tilting a gate, as per the teachings of Erdman, to save time during unloading.

With respect to claim 23, Hagenbuch et al. disclose a lever.

Response to Arguments

Applicant's arguments filed September 19, 2007 have been fully considered but they are not persuasive.

With respect to claims 1, 3-6, 9, 14-17 & 20, Applicant concedes that Hagenbuch discloses a 4-bar linkage, but argues that identical 4-bar linkages have different functions. Applicant is respectfully reminded that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. With respect to "providing a compound motion" Hagenbuch's 4-bar linkage discloses a leading edge (generally indicated as 125) moves vertically between the upright position of FIG. 24 and the unloading position of FIG. 26. The examiner appreciates the 4-bar evidence, but it is neither necessary or appropriate. The claims are not ambiguous or indefinite as to require extrinsic evidence and secondary evidence is not appropriate when arguing a 35 USC 102(b) rejection. Moreover, if Applicant considered the evidence relevant to the invention it would have incorporated said structure in to the claims.

With respect to claim 3, in response to applicant's argument that the cited prior art does not disclose a slight downward loading angle, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed

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invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The 4-bar linkage 184-186 of Hagenbuch could be placed at a myriad of loading position given the adjustability shown in FIGS. 24-26 via hydraulic cylinder 188.

With respect to claims 5 & 15, Hagenbuch clearly discloses the limitations are recited.

With respect to claims 6 & 17, Hagenbuch defines a flow track as the back of said hopper (indicated as 125).

With respect to claim 11, Hagenbuch discloses a staging area could merely be the ground surface, and Applicant is respectfully reminded that the material or article worked upon by the apparatus does not limit apparatus claims. See MPEP 2115.

With respect to claims 10 & 21, Applicant argues that a gas spring is for manual loading. Therefore, Applicant concludes that Hagenbuch's use of hydraulic cylinders is for non-manual loading and thus there is no reason to add a gas spring. This is not persuasive because Konstant makes clear that gas springs are not only for manual loading but for smooth tipping. Thus, the combination is proper.

In response to applicant's argument that the Hagenbuch could not have a gate and still work, the fact that applicant has recognized a disadvantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). In this case, Erdman teaches that gates

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are necessary to lift a stack when removing individual layers. A skilled artisan would recognize that both Hagenbuch and Erdman are directed to emptying layers where Erdman adds the concept of control. Thus, the combination is proper.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GWA *GWA*

Saul Rodriguez
SAUL RODRIGUEZ
SUPERVISORY PATENT EXAMINER